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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Michael Conor MINOGUE
Michael Louis CROWE
U.S. Appln. No. : 09/902,225
U.S. Filing Date : July 10, 2001
Title of Invention : AN ELECTROTHERAPY DEVICE AND
METHOD

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Gordon M. Kessler Reg. No. 38,511

Name of Applicant, Assignee or Registered Representative

Gordon Kessler
Signature

4/9/02
Date of Signature

**PETITION TO MAKE SPECIAL - INFRINGEMENT,
INFORMATION DISCLOSURE STATEMENT, AND
REQUEST FOR INTERVIEW PRIOR TO FIRST OFFICE ACTION**

Assistant Commissioner for Patents
Box PATENT APPLICATION (35 U.S.C. 111)
Washington, D.C. 20231
Sir:

INFORMATION DISCLOSURE STATEMENT

The Examiner's attention is respectfully directed to the documents cited in the
accompanying PTO 1449 (submitted in duplicate). A copy of each of these documents is
attached for the application file.

The Examiner is respectfully requested to consider and make of record the documents cited and return to the undersigned an initialed PTO 1449 showing that the documents have indeed been considered and made of record.

It is believed that no fee is due for entry of this Information Disclosure Statement as it is submitted prior to receipt of the first Office Action in this application. However, if any fee is required, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, against Deposit Account No. 50-0320.

PETITION TO MAKE SPECIAL - INFRINGEMENT

Pursuant to 37 C.F.R. §1.102 and MPEP §708.01 and § 708.02 (II) and any other Rules of the Commissioner and MPEP sections, Applicants respectfully petition to make this application special on the basis of infringement occurring by third parties. A check for \$130.00 in payment of the fee set forth in 37 C.F.R. §1.17(h) is enclosed; and, the Commissioner is hereby authorized to charge any additionally required fee for this petition or for making the application special or credit any overpayment in such fees to Deposit Account No. 50-0320.

The undersigned is an attorney registered to practice before the PTO, as required by MPEP §708.02.

A careful and thorough search of the prior art was made and the documents uncovered by that search are submitted herewith, as shown by the foregoing Information Disclosure Statement, as required by MPEP §708.02.

The present application claims a device for attaching electrodes to a subject for stimulating abdominal muscles by electrotherapy. According to one aspect, the invention provides an attachment means that may be in the form of a belt. The attachment means is provided with a main locating means designed to locate a central electrode and two secondary locating means designed to locate two side electrodes spaced apart from the central electrode. The attachment means also includes a receiving means for receiving a signal generating means, that may be in the form of an electrical pulse generator, and a selecting means for selecting which electrodes to apply electrical pulses from the signal generating means. See Claim 1. The present application also claims that electrodes may be selected in pairs such that electrical pulses are applied between the selected electrodes. See Claim 2. One selected pair of electrodes may be a pair of electrodes making up the central electrode. See Claim 9.

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Applicants' assignee, Bio-Medical Research, Ltd. ("BMR"), has become aware of a competitor in the United States – Electronic Products Distribution, LLC ("EPD") – selling a electrical muscle stimulator device under the name AB ENERGIZER, which is within the claims of the present invention. EPD sells the AB ENERGIZER in the United States through retailers that advertise on the world wide web. Attached as Exhibit A are pages from websites of a number of retailers offering the AB ENERGIZER for sale in the United States.

Attached as Exhibit B is a copy of the Instruction Manual and Weight Loss Guide (the "Manual") provided along with the AB ENERGIZER. The AB ENERGIZER is an electronic muscle stimulation (EMS) device that "uses paired anatomically positioned electronic exercisers" to apply electrical pulses to stimulate abdominal muscles. Manual at 4. As shown at page 15 of the Manual, the AB ENERGIZER includes a belt that has attachment points for up to four "electronic energizer" units. The energizer units connect to the belt by snaps located on the outside surface of the belt. Id. at 15. The snaps are connected with electrodes located on the inner surface of the belt, and each energizer unit connects with two electrodes on the inner surface of the belt via the snaps. Id. at 9. The belt is positioned around the waist of the user so that the electrodes are positioned adjacent abdominal muscle groups. Id. at 10, ¶8. The energizer units are then switched on and the intensity level and pulse program of each unit is adjusted. Id. at 10-11, ¶¶ 9-12.

A rigid comparison of EPD's AB ENERGIZER with the claims of the application reveals that at least some of the claims are unquestionably infringed. As compared with claims 1 and 2, the AB ENERGIZER provides an attachment means, that is a belt. The belt includes locating means, that is, the electrodes fixed to positions on the inside surface of the belt. A total of eight electrodes (i.e., at least three electrodes) are located inside the belt. Id. at 9. These include two pairs of central electrodes and two pairs of two side electrodes. Id. at 9. When worn as instructed, the central electrodes are positioned along the center of the user's abdomen and the side electrodes are spaced apart from the central electrode toward the user's sides. Id. at 15. The belt includes receiving means (i.e., snaps) for attaching signal generating means (i.e., energizing units). Id. at 15. The energizing units are all individually selectable to apply pulses to selected pairs of electrodes. Id. at 10-11. As compared with claim 9, the AB ENERGIZER includes a pair of electrodes connected with an energizer unit attached to the center of the belt. Id. at 9 and

15. When a centrally located energizer unit is turned on, pulses are applied to the pair of electrodes located at the center of the belt. Id. at 10.

Accordingly, it is respectfully submitted that all of the requirements of MPEP §708.02 (II) have been met, namely the petition fee is enclosed herewith and this paper is a petition to make special and:

- (1) That there is an infringing product actually on the market or methods in use;
- (2) That a comparison of the alleged infringing product, or methods with the claims of the application has been made, and that, in the opinion of the undersigned, some of the claims of the application are unquestionably infringed; and
- (3) That there has been a careful and thorough search of the prior art (with a copy of the references therefrom supplied herewith).

It is respectfully submitted that BMR is suffering by not having a U.S. Patent corresponding to the present application. Until a U.S. Patent corresponding to the present application issues, BMR is without any remedy to prevent infringement; and, without a U.S. Patent corresponding to the present application, BMR is faced with lost sales and revenue due to competitive products and methods within at least one claim of the present application.

Therefore, it is respectfully submitted that the present application qualifies for special status; and, according the present application special status is respectfully requested.

REQUEST FOR INTERVIEW

In addition, if there is any issue that presents an impediment to first action allowance of the present application, an interview is respectfully requested prior to any first Office Action on the merits.

Thus, Applicants respectfully request an interview prior to any first Office Action; and, the Examiner is respectfully requested to contact the undersigned prior to issuing any first Office Action to arrange a mutually convenient time and manner for such an interview.

Any additionally required fee or overpayment in any fee occasioned by this paper may be charged or credited to Deposit Account No. 50-0320.

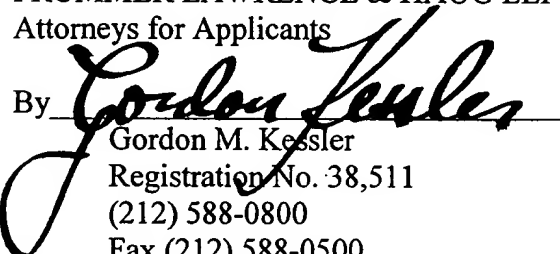
CONCLUSION

Early and favorable examination on the merits, special status, and first action allowance or an interview prior to any first Office Action (so any issues may be rapidly resolved), are all earnestly solicited.

Respectfully submitted,

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By


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